

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MIC:DET:TL-N-8367-98
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date: JAN 26 1999

to: Chief, Examination Division, Michigan District
Attn: Branch 1, Case Manager Larry Strong

from: District Counsel, Michigan District, Detroit

subject: Statute Extension for [REDACTED]

In response to your memorandum dated December 18, 1998, we have reviewed (1) the Summary of the Proxy Statement/Prospectus, exhibit A, (2) the proposed "consent to Extend the Time to Assess Tax," exhibit B, (3) a copy of the advice rendered by this office in November of 1998, which was post-reviewed and approved by the National Office, and (4) a copy of the certificate of amendment of certificate of incorporation filed by [REDACTED], exhibit C. We have concluded that the appropriate entity to execute the consents is [REDACTED] ("[REDACTED]"). We concur in the language utilized in your proposed consent. The advice in this memorandum is subject to post-review in the National Office, which we will expedite. If you have any questions, please call the undersigned at (313) 226-2444, voice mail box #231.

Issue

Which entity is authorized to extend the statute of limitations on behalf of [REDACTED] for the tax years ended December 31, [REDACTED] and [REDACTED]?

Facts

[REDACTED] ("[REDACTED]") filed a consolidated return with its numerous subsidiaries for the tax years in question. [REDACTED] and [REDACTED] entered into a Combination Agreement which was consummated on [REDACTED]. As a result of that agreement, [REDACTED] Merger Sub was merged into [REDACTED], with [REDACTED] surviving, and [REDACTED] shareholders exchanged their [REDACTED] common stock for [REDACTED] Ordinary stock. [REDACTED] will retain the [REDACTED] stock, with [REDACTED] becoming,

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in effect, a subsidiary of [REDACTED]. On [REDACTED], the taxpayer filed a Certificate of Amendment of Certificate of Incorporation with the State of Michigan, to change the name of [REDACTED] to [REDACTED]. The existence of [REDACTED] was not terminated by the Combination Agreement.

Analysis

Section 6501(a) provides that the government has three years after the return is filed to assess any additional tax. Section 6501(c)(4) provides that where, before the expiration of such time, both the Secretary and the taxpayer consent in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

The common parent "shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year." Treas. Reg. § 1.1502-77(a). The common parent remains the agent for the members of the group for any years during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. Craigie, Inc. v. Commissioner, 84.T.C. 466, 472 (1985); Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985). Thus, as a general rule, the common parent remains the proper party to extend the limitations period and receive notices of deficiency for any taxable year during which it was the common parent, as long as it remains in existence under state law.

Since [REDACTED] (formerly [REDACTED]) remains in existence, [REDACTED] is still the sole agent for its consolidated group. The consent must be executed by someone with authority to sign the consents on behalf of [REDACTED].

Neither the Internal Revenue Code, nor the regulations under I.R.C. § 6501(c)(4) specify who may sign consents executed under that section. However, the Service will apply the rules applicable to the execution of the original returns to consents to the extension of time to make an assessment. Rev. Rul. 83-41 1983-1 C.B. 349. Section 6062 provides that a Corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act.

PHOEBE L. NEARING
District Counsel

By: _____
TREVOR T. WETHERINGTON
Attorney

Attachments
As Stated.